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Questions and Answers on 112(g) Final Rule

The final rule for implementing certain provisions in section 112(g) of the Clean Air Act was published in the Federal Register on December 27, 1996 at 61 FR 68384. Listed here are commonly asked questions and their answers on the rule. It is not EPA's intent to create new policy. EPA intends to update these questions and answers as needed. Should the reader have further questions they may be directed to Kathy Kaufman at:

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Applicability

Q1 Is this rule applicable only to sources in the source category list developed under 112(c)?

A1 No. This rule applies to all new major sources of HAP (hazardous air pollutants) even if they are not yet on the source category list. This list contains the source categories for which EPA is to promulgate MACT standards. (The Clean Air Act requires EPA to list all categories of major sources of HAP. If it is brought to the EPA's attention that a category has not yet been listed, the EPA must then list it, unless the category is regulated under section 129 (see also #3 below)). The exception to this are source categories that were deleted from the list pursuant to 112(c)(9). See 40 CFR 63.40(e) or 61 FR 68399.

Q2 Are sources subject to a promulgated MACT standard subject to 112(g) as well?

A2 No. 112(g) is intended to serve only in the interim until a MACT standard is promulgated. See 61 FR 68385.

Q3 Is a new municipal waste combustor (MWC) subject to rules under Section 129 also subject to 112(g)?

A3 No. 112(g) was designed so that new major sources of HAP would install maximum achievable control technology (MACT) in the interim until a MACT standard is promulgated under section 112(d) (see #1 above). MWC's are to be regulated under section 129 and not under section 112(d). Under 129(h)(2) it states "...that no

solid waste incineration unit subject to performance standards under this section and section 7411 (section 111) of this title shall be subject to standards under section 7412(d) (section 112(d)) of this title."

Note also that section 129(a)(2) requires that the MWC rule set standards that reflect MACT. To require a source already subject to MACT levels of control to a review process under section 112(g) would be unnecessary.

Q4 Are increases in emissions downstream from the new source considered when determining if the new source meets the major source threshold or for applying MACT?

A4 No.

Q5 Can a source get out of review under 112(g) by netting (reduce emissions from a second source in order to keep the net total amount of emissions below the major source threshold)?

A5 Netting is not allowed under section 112(g) for those sources covered by this rule (i.e. for constructed and reconstructed major sources).

Q5 Does 112(g) apply to reconstruction of a process or production unit that is a major source where the net change in emissions is less than 10 tons per year of any HAP or 25 tons per year of any combination of HAP?

A5 Yes, if the end result of the reconstruction is a major source. The definition for "Reconstruct a major source" in section 63.41 applies to all existing major sources which meet the 50% cost threshold, regardless of the change in emissions. If the reconstruction would result in an existing minor source becoming a major source it would be subject to review under 112(g), again regardless of the change in emissions. However, if the reconstruction would result in a major source becoming a minor source then it is not subject to review under 112(g).

Q6 Can a source avoid a review under section 112(g) if it applies controls that are not MACT in order to keep emissions below the major source threshold?

A6 Yes, but the controls need to be, at a minimum, practicably enforceable by a State or local air pollution control agency. This may change pending rulemaking which could require the control to be Federally enforceable. See further explanation in

the footnote on 61 FR 68388 which discusses the 1995 court case (*National Mining v. EPA*) and the impact it may have on potential to emit (PTE) limits. Because most sources of HAP emit HAP that are VOCs, they will be covered under a State's preconstruction minor new source review (NSR) program which issue permits that are Federally enforceable. So the outcome of the rulemaking should not be an issue in those cases. This may be an issue for those sources which emit non-VOC HAP which are not covered under minor preconstruction NSR programs.

Q7 Are new municipal landfills subject to review under section 112(g)?

A7 Yes. Although a landfill is not a traditional source, if it will be a major source of HAP at any point in its lifetime, then it should be subject to review under section 112(g). In addition, the EPA intends to set MACT standards for municipal solid waste landfills by November 15, 2000. Section 112(g) will serve as an interim process for the review and control of emissions of HAP until and unless the MACT standard is promulgated.

Q8 Are expansions of existing municipal landfills subject to review under section 112(g)?

A8 Yes. Although landfill expansions may not fit neatly under the definition of a process or production unit, the EPA believes it is sensible to view the "product" of a landfill as the containment of solid waste. Therefore an increase in the landfill's permitted capacity should be treated as addition of a new source. If the emission increase would be expected to meet the major source threshold at any point, then section 112(g) review would be triggered.

Q9 A facility is adding a major process unit. Is the entire facility subject to 112(g)?

A9 No, only the new major process unit is subject to review under 112(g), not the entire facility.

New Source MACT Determinations

Q1 Is there guidance on how to do new source MACT determinations?

A1 Guidance can be found in the preamble to the 112(g) rule starting on page 68391. There is no guidance document specifically for 112(g) for doing new source MACT determinations.

However, similar guidance can be found in the Guidelines for MACT Proposal Determinations under Section 112(j), May 1994, EPA 453/R-94-026. The analysis for doing new source MACT determinations is the same regardless of whether it is done under the authority of section 112(d), (g), or (j).

An electronic copy in WordPerfect 5.0 format can be found on the Technology Transfer Network. Look under CAAA - Clean Air Act (Rules/Policy/Guidance); Title III: Hazardous Air Poll.; Policy Guidance Documents; and look for GUID112J.ZIP dated 5/3/94.

Note that some changes may be proposed soon to the 112(j) rule, and the guidance document could change depending on changes made to the 112(j) rule.

Adoption of 112(g) Program

Q1 How are MACT determinations made when a State has not adopted a 112(g) program and a source needs a MACT determination in anticipation that construction will begin shortly after the effective date the State adopts the 112(g) program?

A1 This needs to be worked out by each State. There is nothing in the 112(g) rule that precludes a State from doing a MACT determination such that one can be issued in a timely fashion for the source once the State has adopted a 112(g) program. If State law prohibits this for whatever reason, then the source will have to wait until the 112(g) program has been adopted before submitting an application for a MACT determination. Of course, a 112(g) review is not needed if the source will begin construction before the 112(g) program comes into effect.

Q2 Section 63.42(a) requires that the chief executive officer of the permitting authority to certify that the program satisfies all applicable requirements of the 112(g) rule. What information is needed to certify the program?

A2 EPA recommends that the permitting authority include its certification along with the program description that it sends to its EPA Regional office. The permitting authority should state something like the following: "I certify that [this program] satisfies all applicable requirements established by sections 63.40 through 63.44 of title 40 of the US Code of Federal Regulations."

Q3 Section 63.42(a) requires that the chief executive officer of the permitting authority provide a written description of the program to the appropriate EPA Regional Office. What needs to be in this written description and is EPA intending to review and approve each program?

A3 The EPA does not specify the contents of the written description and that judgement is left up to each State. Nor does the rule require a formal review process by EPA of each State 112(g) program, such as is done for State implementation plans for the criteria pollutant program.

There is no process in the 112(g) rule that allows for disapproval of a State program by EPA. If an EPA Regional office believes that a State's program is deficient in meeting the requirements of the 112(g) rule, the EPA could determine that the State is not fulfilling its legal obligations under Title V of the Act.

Q4 Can permitting authorities with interim approval of their Title V permit programs adopt and implement a 112(g) program?

A4 Yes. Any State which does not have interim approval or fully approved program would not be able to adopt a 112(g) program. Currently, most States either have a partially or fully approved program.

Typographical Errors

On page 68400, the definition should be for "Greenfield site" and not "Greenfield suite."

On page 68401, 63.43(b) should say "the owner or operator" and not "the owner and operator."